

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

Scholz Design, Inc. : Case No. \_\_\_\_\_  
 3131 Executive Parkway  
 Toledo, Ohio 43606,

07 CIV 11045

Plaintiff, : COMPLAINT

vs. : Plaintiff Demands a Jury Trial

Kevin Maher : **JUDGE CONNER**  
 28 Zachary Taylor  
 Stony Point, New York 10980

U.S. DISTRICT COURT  
 201 DEC - 5 P 4:42  
 S.D. OF N.Y. W.P.

And :  
 Blanchard Gate, LLC

20 Squadron Blvd., Suite 270  
 New City, New York 10956

And :  
 MBC Contractors, Inc.

c/o Patrick J. Magee  
 27 Old Gate Hill Avenue  
 Stony Point, New York 10980

And :  
 Eric Knute Osborn

7 Joyce Plaza  
 Stony Point, New York 10980

## Defendants.

Plaintiff Scholz Design, Inc. ("Scholz") complains against Defendants Kevin Maher, Blanchard Gate, LLC, MBC Contractors, Inc., and Eric Knute Osborn (collectively "Defendants") as follows:

THE PARTIES

1. Scholz is a Delaware corporation with its principal place of business in Toledo, Ohio.
2. Defendant Kevin Maher is a New York resident.

3. Defendant Blanchard Gate, LLC is a New York limited liability company and is the owner of the home located at 8 Sergeant Schwartz Court, Stony Point, New York (the "House").

4. Defendant MBC Contractors, Inc. is a New York corporation and is the builder of the House.

5. Defendant Eric Knute Osborn is a New York resident and is the architect who prepared the architectural drawings for the House.

**JURISDICTION AND VENUE**

6. This Court has personal jurisdiction over each Defendant.

7. This Court has subject matter jurisdiction over this civil action for copyright infringement pursuant to 28 U.S.C. § 1331 and § 1338(a).

8. Venue is proper pursuant to 28 U.S.C. § 1391 and § 1400.

**BACKGROUND**

9. Scholz is engaged in the research, development, creation and sale of architectural home designs and drawings. Scholz has developed a network of licensed or registered builders for Scholz designs. Scholz's home designs are sold internationally and in interstate commerce.

10. Scholz has authored architectural designs and drawings entitled "The Kimbleton A 111" (the "Kimbleton Design"). A true and accurate copy of the abridged version of the Kimbleton Design is attached as **Exhibit A**.

11. The Kimbleton Design is an original work of authorship and constitutes copyrightable subject matter under the copyright laws of the United States (17 U.S.C.A. §101 *et seq.*). Scholz is the author of the Kimbleton Design and the current claimant in the copyright of the Kimbleton Design.

12. Scholz has complied in all respects with the copyright laws of the United States and has secured the exclusive rights and privileges in and to the Kimbleton Design. Scholz has applied

for and received from the Register of Copyrights the appropriate Certificates of Copyright Registration for the Kimbleton Design. True and accurate copies of the Certificates of Copyright Registration for the Kimbleton Design are attached as **Exhibit B**.

13. Commencing on the date of first publication, and consistently thereafter, the Kimbleton Design has been published by Scholz in conformity with the copyright laws of the United States.

14. Without Scholz's prior knowledge or permission and after Scholz obtained the Certificates of Copyright Registration for the Kimbleton Design, Defendants prepared, or induced, caused, or materially contributed to the preparation of, certain architectural drawings for the House by copying the Kimbleton Design. Specifically, Defendants have used the drawings and otherwise induced, caused, or directed the wrongfully copied Kimbleton Design to be used or exploited in the construction of the House. True and accurate copies of photographs of the House are attached as **Exhibit C**.

15. Upon information and belief, Defendants participated in the infringing activities, including but not limited to the copying of the Kimbleton Design, the preparation of the architectural drawings for the House, and the construction of the House.

16. Defendants' actions violate Scholz's exclusive copyrights in the Kimbleton Design and those actions constitute an infringement of Scholz's copyrights under 17 U.S.C.A. § 106.

17. Upon information and belief, Defendants' copyright infringement was knowing, willful and intentional.

18. Defendants' actions have caused, and will continue to cause, irreparable damage to Scholz for which there exists no adequate remedy at law.

19. During the pendency of this action, and permanently thereafter, Defendants should be enjoined and restrained from copying, preparing derivative works based upon, or otherwise infringing upon, directly or indirectly, Scholz's copyright in the Kimbleton Design.

20. Scholz is entitled to recover all damages suffered as a result of Defendants' wrongful acts, including but not limited to profits obtained by Defendants as a result of their wrongful acts and the loss of profits sustained by Scholz. In the alternative, Scholz is entitled to recover statutory damages in an amount to be determined by the Court. Scholz is also entitled to recover all reasonable attorney's fees, court costs and interest on said damages from the date of Defendants' infringement.

WHEREFORE, Plaintiff Scholz Design, Inc. demands judgment as follows:

A. An order from this Court preliminarily and permanently enjoining and restraining Defendants and their respective agents, along with those in active participation with Defendants, from copying, preparing derivative works based upon, or otherwise infringing upon, directly or indirectly, Scholz's copyright in the Kimbleton Design in accordance with 17 U.S.C.A. §502;

B. A monetary judgment against Defendants, jointly and severally, for Scholz's damages and the profits derived by Defendants from their unauthorized use of the Kimbleton Design and infringement upon Scholz's copyrights in that design; or, in the alternative, statutory damages in an amount to be determined by the Court based upon Defendants' intentional, willful and deliberate copyright infringement in accordance with 17 U.S.C.A. §504;

C. An award of all reasonable attorney's fees and costs incurred by Scholz in pursuit of its copyright infringement claims, along with interest and all damages from the date of Defendants' infringements in accordance with 17 U.S.C.A. §505; and

D. All other legal and equitable relief as the Court deems just and appropriate.

Respectfully submitted,

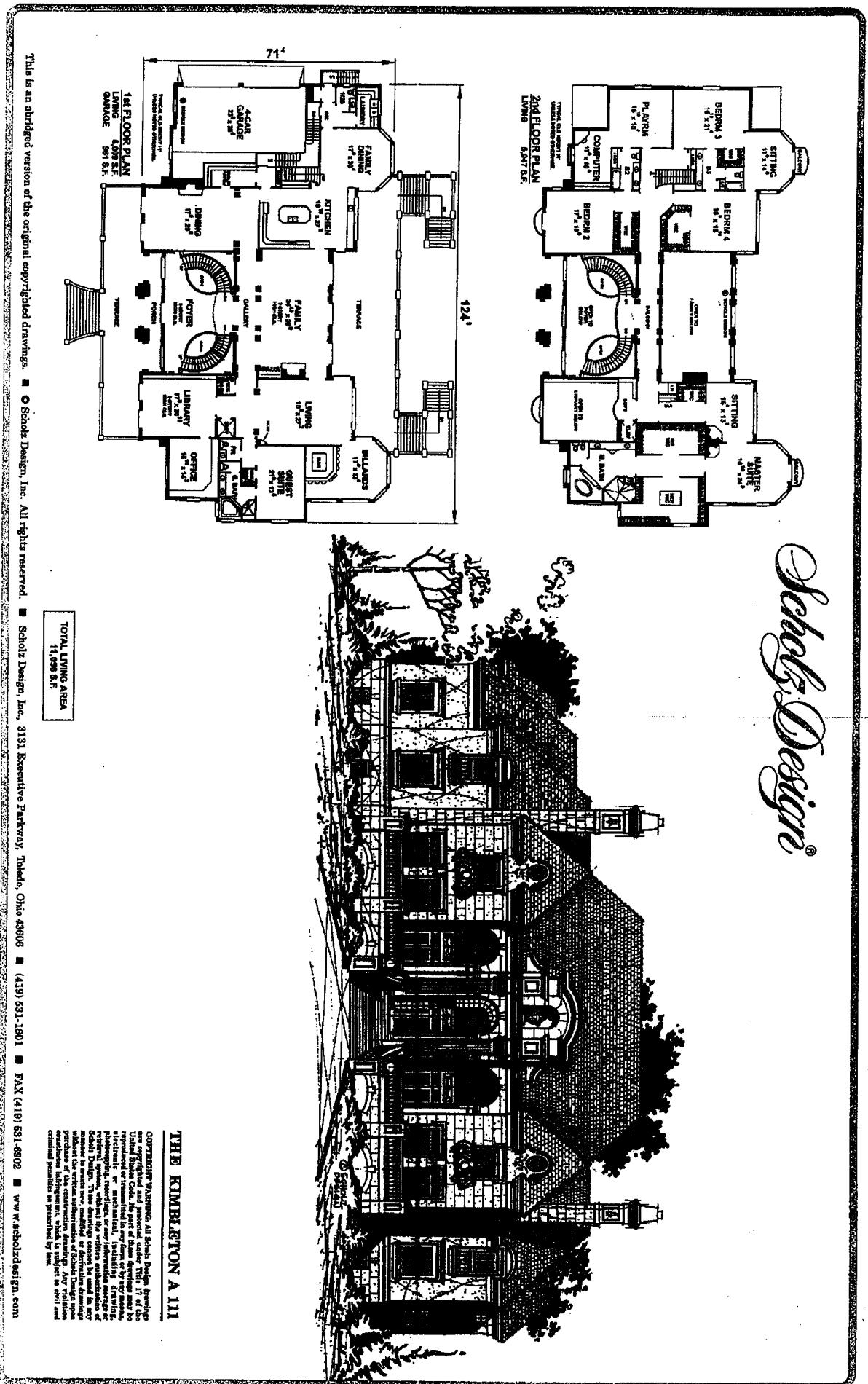
  
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[mshalhoub@goldbergsegalla.com](mailto:mshalhoub@goldbergsegalla.com)

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[tecourtney@eastmansmith.com](mailto:tecourtney@eastmansmith.com)

**Attorneys for Plaintiff**



## CERTIFICATE OF REGISTRATION

Case 7:07-cv-11045-WCC Document 1-3 Filed 12/05/2007 Page 1 of 4



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

FORM VA

For a Work of the Visual Arts  
UNITED STATES COPYRIGHT OFFICE

VA 1-157-956

1102001157956  
EFFECTIVE DATE OF REGISTRATIONSEP 11 2002  
Month Day Year

OFFICIAL SEAL

REGISTER OF COPYRIGHTS  
United States of America

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

## TITLE OF THIS WORK ▼

The Kimbleton A 111

NATURE OF THIS WORK ▼ See Instructions  
Architectural Technical Drawings of  
Coversheet Consisting of 1 Sheets.

## PREVIOUS OR ALTERNATIVE TITLES ▼

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼

Number ▼

Issue Date ▼

On Page ▼

## NAME OF AUTHOR ▼

a Scholz Design, Inc.

## DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

N/A

N/A

Was This Author's Contribution to the Work:

Anonymous?  Yes  No

If the answer to either of these questions is "Yes," see detailed instructions.

Pseudonymous?  Yes  No

## Was this contribution to the work a "work made for hire"?

 Yes

Author's Nationality or Domicile

Name of Country

 No

OR { Citizen of ▶ USA

Domiciled in ▶ Ohio, USA

## NATURE OF AUTHORSHIP Check appropriate box(es). See Instructions

3-Dimensional sculpture  Map  Technical drawing  
 2-Dimensional artwork  Photograph  Text  
 Reproduction of work of art  Jewelry design  Architectural work

## NAME OF AUTHOR ▼

## DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

N/A

N/A

Was This Author's Contribution to the Work:

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3-Dimensional sculpture  Map  Technical drawing  
 2-Dimensional artwork  Photograph  Text  
 Reproduction of work of art  Jewelry design  Architectural work

Year in Which Creation of This Work Was Completed

2001

This information must be given in all cases.

Date and Nation of First Publication of This Particular Work

Completes this Information Month ▶ 09 Day ▶ 06 Year ▶ 01

USA

Nation

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2 ▼

Scholz Design, Inc.  
3131 Executive Parkway, 2nd Floor  
Toledo, OH 43606

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

APPLICATION RECEIVED

SEP 11 2002

ONE DEPOSIT RECEIVED

SEP 11 2002

TWO DEPOSITS RECEIVED

FUND RECEIVED

FUND RECEIVED

FUND RECEIVED

MORE ON BACK ▶ • Complete all applicable spaces (numbers 5-9) on the reverse side of this page.  
• See detailed instructions.  
• Check the claim as false.

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EXAMINED BY *JJS*CHECKED BY *jj*

CORRESPONDENCE  
Yes

FOR  
COPYRIGHT  
OFFICE  
USE  
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

Yes  No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼

- This is the first published edition of a work previously registered in unpublished form.
- This is the first application submitted by this author as copyright claimant.
- This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼

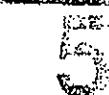
N/A

Year of Registration ▼

N/A

DERIVATIVE WORK OR COMPILED Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼



a  
See instructions  
before completing  
this space

b

N/A

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and to which copyright is claimed. ▼

b

N/A

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name ▼

Account Number ▼

a  
7

N/A

N/A

a  
b

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ▼

James P. Barnhart, Design & Engineering  
SCHOLZ DESIGN, INC.  
3131 Executive Parkway, 2nd Floor  
Toledo, OH 43606

Area code and daytime telephone number ▶ (419) 531-1601

Fax number ▶ (419) 534-6360

Email ▶

CERTIFICATION\* I, the undersigned, hereby certify that I am the

check only one ▶

{  author  
 other copyright claimant  
 owner of exclusive right(s)  
 authorized agent of Scholz Design, Inc.  
Name of author or other copyright claimant, or owner of exclusive right(s) ▼

b  
8

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

James P. Barnhart, Design & Engineering

Date ▶ 9-4-02

Handwritten signature (X) ▼

Certificate  
will be  
mailed in  
window  
envelope  
to this  
address:

Name ▼	James P. Barnhart, Design & Engineering SCHOLZ DESIGN, INC.
Number/Street/Apt ▼	3131 Executive Parkway, 2nd Floor
City/State/Zip ▼	Toledo, OH 43606

YOU MUST:  
• Complete all necessary spaces  
• Sign your application in space 6

SEND ALL 3 ELEMENTS  
IN THE SAME PACKAGE:

1. Application form
2. Nonrefundable filing fee in check or money order payable to Register of Copyrights
3. Deposit material

MAIL TO:

Library of Congress  
Copyright Office  
101 Independence Avenue, S.E.  
Washington, D.C. 20559-6000

As of July 1, 1998,  
the filing fee for  
Form VA is \$30.

9

\*17 U.S.C. § 506(e) Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

June 1999—100,000  
WEB REV June 1999

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U.S. GOVERNMENT PRINTING OFFICE: 1999-45-87971

## CERTIFICATE OF REGISTRATION

Case 7:07-cv-11045-WCC

Document 1-3

Filed 12/05/2007

Page 4 of 4



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FORM VA  
For a Work of the Visual Arts  
UNITED STATES COPYRIGHT OFFICE

VA 1-157-955



EFFECTIVE DATE OF REGISTRATION

Sep 11 2002  
Month Day Year

## OFFICIAL SEAL

REGISTER OF COPYRIGHTS  
United States of America

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

## TITLE OF THIS WORK ▼

NATURE OF THIS WORK ▼ See instructions  
Architectural Work/Building Not Yet Constructed  
Consisting of 1 Sheets.

The Kimbleton A 111

## PREVIOUS OR ALTERNATIVE TITLES ▼

Publication as a Contribution: If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

## NAME OF AUTHOR ▼

a Scholz Design, Inc.

Was this contribution to the work a "work made for hire"?

Yes  
 No

Author's Nationality or Domicile  
Name of Country

OR { Citizen of ▶ USA  
Domiciled in ▶ Ohio, USA

DATES OF BIRTH AND DEATH  
Year Born ▼ Year Died ▼

N/A N/A

## Was This Author's Contribution to the Work

Anonymous?  Yes  No  
Pseudonymous?  Yes  No

If the answer to either of these questions is "Yes," see detailed instructions.

## NATURE OF AUTHORSHIP Check appropriate box(es). See Instructions

3-Dimensional sculpture  Map  Technical drawing  
 2-Dimensional artwork  Photograph  Text  
 Reproduction of work of art  Jewelry design  Architectural work

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Year in Which Creation of This Work Was Completed  
2001

This information must be given in all cases.

## Date and Nation of First Publication of This Particular Work

Complete this information ONLY if this work has been published.

Month ▶ 09 Day ▶ 06 Year ▶ 01

USA

Nation

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

Scholz Design, Inc.  
3131 Executive Parkway, 2nd Floor  
Toledo, OH 43606 Phone: 419-531-1601

Transfer if the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

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		ONE DEPOSIT RECEIVED SEP 11 2002
		TWO DEPOSITS RECEIVED
FUND RECEIVED		

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\* See detailed instructions

\* Sign the form at the B

DO NOT WRITE HERE

Page 1 of 2 pages

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EXAMINED BY *JL*

FORM VA

CHECKED BY *JL*

CORRESPONDENCE  
Yes

FOR  
COPYRIGHT  
OFFICE  
USE  
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

Yes  No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) *V*

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b.  This is the first application submitted by this author as copyright claimant.

c.  This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number *V*

Year of Registration *V*

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a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. *V*

*a*  
See instructions  
before completing  
this space

N/A

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed *V*

*b*

N/A

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name *V* Account Number *V*

*a*

N/A

N/A

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP *V*

James P. Barnhart, Design & Engineering  
SCHOLZ DESIGN, INC.

3131 Executive Parkway, 2nd Floor  
Toledo, OH 43606

Area code and daytime telephone number *V* (419) 531-1601

Fax number *V* (419) 534-6360

Email *V*

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check only one *V*

author  
 other copyright claimant  
 owner of exclusive right(s)  
 authorized agent of *Scholz Design, Inc.*  
Name of author or other copyright claimant, or owner of exclusive right(s)

*8*

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date *V* If this application gives a date of publication in space 3, do not sign and submit it before that date.

James P. Barnhart, Design & Engineering

Date *V* 9-4-02

Handwritten signature *V*

*X* *James P. Barnhart*

YOU MUST:
• Complete all necessary spaces
• Sign your application in space 3
SEND ALL 3 ELEMENTS IN THE SAME PACKAGE:
1. Application form
2. Nonrefundable filing fee in check or money order payable to Register of Copyrights
3. Deposit material
MAIL TO:
Library of Congress Copyright Office 101 Independence Avenue, S.E. Washington, D.C. 20559-6000

*9*

Certificate  
will be  
mailed in  
window  
envelope  
to this  
address:

Name <i>V</i>	James P. Barnhart, Design & Engineering SCHOLZ DESIGN, INC.
Number/Street/Apt <i>V</i>	3131 Executive Parkway, 2nd Floor
City/State/ZIP <i>V</i>	Toledo, OH 43606

17 U.S.C. § 806(e) Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 408, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

June 1999-100,000  
WEB REV. June 1999

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U.S. GOVERNMENT PRINTING OFFICE 1999-464-679-71



